

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ANTHONY CHAVEZ,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-249-L
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of the Social Security)	
Administration,)	
)	
Defendant.)	

ORDER

On February 17, 2016, Magistrate Judge Bernard M. Jones entered a Report and Recommendation in this action brought by plaintiff Anthony Chavez for judicial review of the defendant Acting Commissioner of the Social Security Administration's (Commissioner's) final decision denying plaintiff's application for supplemental security income benefits ("SSI"). The Magistrate Judge recommended that the Commissioner's decision be affirmed.

The court file reflects that plaintiff timely filed his Objections to the Report and Recommendation, which the court has carefully considered. The court has also reviewed the Commissioner's response to plaintiff's objection. Upon review, the court finds that plaintiff's objections are insufficient to justify overturning the conclusions of the Magistrate Judge in this matter.

The Magistrate Judge was correct in finding that the ALJ properly assessed plaintiff's mental limitations from depression and anxiety in terms of

work-related functions. In the Report and Recommendation, the Magistrate Judge noted that the ALJ did not simply find that plaintiff could perform unskilled work (“simple work” as phrased by plaintiff), but instead “expressly included in the RFC work-related functional limitations due to Plaintiff’s mental impairments.” Doc. No. 19, p. 7. The Magistrate Judge noted that the ALJ limited plaintiff to the ability “to understand, remember, and carry out simple instructions,” to “make only simple work-related decisions” and to “deal with only occasional changes in work processes and environments.” Id. Significantly, the Magistrate Judge explicitly stated in the Report and Recommendation that plaintiff had not articulated what additional limitations should have been included in the RFC and failed to establish reversible error based on the mental limitations as expressed by the ALJ in the RFC. Id. at 8. The court agrees with the Commissioner that plaintiff’s belated attempt, in his Objections to the Report and Recommendation, to address the limitations allegedly caused by his anxiety in his Objections to the Report and Recommendation, comes too late and results in a waiver due to the failure to include these issues in his opening brief. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”).

Upon review of plaintiff’s Objections to the Report and Recommendation, the court finds that plaintiff has failed to justify overturning the conclusions of the

Magistrate Judge. Thus, upon *de novo* review, the court finds that the Report and Recommendation should be and is hereby adopted in its entirety. The decision of the Commissioner to deny plaintiff's application for supplemental security income benefits is **AFFIRMED**.

It is so ordered this 23rd day of March, 2016.



TIM LEONARD
United States District Judge